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Must Colorado Real Property Installment Sale Contracts be Foreclosed as Mortgages?

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MUST COLORADO REAL PROPERTY INSTALLMENT SALE CONTRACTS BE FORECLOSED AS MORTGAGES?

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IT has long been the practice in Colorado that, whenever real estate was being sold with a cash payment constituting only a small part of the purchase price, a contract of sale would be made, such contract providing for the payment of the purchase price in specified installments and that upon payment of the purchase price in full the title to the property would be conveyed by the seller to the purchaser and that in event of failure on the part of the purchaser to make any of the payments of principal or interest provided by the contract or in event of any other violation of the terms of the contract on the part of the purchaser then, upon the default continuing for a specified period after notice from the seller to the purchaser (time being of the essence of the contract), the contract might be terminated by the seller and in such event all payments theretofore made thereunder should be retained by the seller as liquidated damages and the seller should have the right to re-enter and take possession of the property.

During all of this time until the rendering of the decisions in the cases of Pope vs. Parker and Fairview Mining Corporation vs. American Mines and Smelting Company, which will be hereinafter discussed, it was generally understood in Colorado that, if the period of notice specified in the contract was reasonable, the method of termination of the rights of the purchaser in the manner provided by the contract was a valid and legal one and that, upon the purchaser being in default, the specified notice being given and the default continuing during the specified period, the contract and all rights of the purchaser in and to the property and to possession thereof were terminated.

In accordance with this generally accepted view, it was taken for granted by the attorneys and by the Courts that, in the event of such a termination of the contract of sale, if the purchaser continued in the possession of the property thereafter, the remedy of the seller would be an action to recover

possession of the property, such as an unlawful detainer suit or an action in ejectment, and that the judgment of the Court in such a possessory action in favor of the seller constituted an adjudication that the contract of sale had been legally terminated and the purchaser therefore had no further right either to the possession of the property or in the title to the property. And, if the purchaser voluntarily surrendered possession after the termination of the contract but his contract appeared of record so that it constituted a cloud on the title and a quit claim deed could not be secured from him, it was considered that a decree in a suit against him to quiet title or to remove a cloud would definitely clear the record title from such contract.

That this practice and this general understanding was justified by the state of the law as it then stood in Colorado is shown by the following statute and decisions:

Section 6369 of the 1921 Compiled Laws, which is a part of the chapter on unlawful detention, a purely possessory action, provides:

"Any person shall be deemed and held guilty of an unlawful detention of real property in the following cases: * * *

"Ninth—When a vendee, having obtained possession under an agreement to purchase lands, or tenements, and having failed to comply with his agreement, withholds possession thereof from his vendor, or assigns, after demand therefor being duly made."

The foregoing statute has been in force since 1885. Under the express provisions of Sec. 281 of our Code a mortgagee cannot recover possession of real property without foreclosure and sale and therefore this statute was a clear expression of the understanding on the part of the Legislature that the relation of seller and purchaser under such a contract did not involve the relation of mortgagee and mortgagor.

Hundreds of cases have been brought in the courts of Colorado by sellers against purchasers under defaulted contracts of sale to recover possession of real estate or to quiet title or remove cloud and where the court found that the contract had been terminated in accordance with its terms it would in each case grant the relief prayed for. That this view was also shared by our Supreme Court is shown by the following cases:

In Roller vs. Smith, 76 Colo. 371, suit was brought in ejectment by a vendor to recover possession of the real estate upon the forfeiture by the vendee under the terms of a contract of sale. The Supreme Court held that ejectment was the proper remedy, the Court saying:

> "The elimination of the equitable relief was right. The contract provided that upon failure to pay instalments the vendee's rights and his possession should be forfeited. It was on the ground of failure to pay instalments that the suit was brought. This was to enforce, not to cancel the contract. There was no function for equity to perform. The complaint should have been ejectment, drawn under Code of 1921, sec. 287."

In Scroggs vs. Harkness Heights Land Company, 76 Colo. 597, suit was brought to quiet title as against a recorded contract of purchase after default and the notice given of termination in accordance with its terms. Upon trial judgment was rendered for the plaintiff and this judgment was affirmed by the Supreme Court. The question of whether action to quiet title was the proper remedy was not raised in the case or decided by either Court.

Somewhat the same is true of the case of Ruth vs. Smith, 29 Colo. 154 in which suit was brought by the vendor in unlawful detainer under the ninth subdivision above quoted. In that case the court assumed that unlawful detainer was the proper suit where a vendee had entered into possession of the premises in pursuance of a contract of sale and had made default.

In Mesa Market Company vs. Crosby, 174 Fed. 96, which was a decision of the Circuit Court of Appeals of the Eighth Circuit upon an appeal from the District Court of the District of Colorado, the contract for sale of real estate provided that in case of default on the part of the purchaser the vendor should be entitled to resume possession and terminate the right of purchase and in such case all installments of purchase price paid and all improvements added to the premises were to be regarded as rental of the premises during the occupancy of the purchaser; and the Court held that upon the happening of default in performance by the purchaser the relation between the parties became that of landlord and tenant because of the said provisions of the contract.

The precise question was first squarely decided by our Supreme Court in the case of Schiffner vs. Chicago Title and Trust Company, 79 Colo. 249. This was an action of detention to recover possession of the property; defendant was in possession of the property as the result of having entered into a contract with plaintiff for the purchase of same by defendant and had failed to comply with such contract. The Court after discussing the statute already quoted, said:

"It is next argued that the contract must be treated as an equitable mortgage, but there can be no mortgage of any kind unless the mortgagor has some real estate to pledge. This the defendant did not have. Whatever rights, either legal or equitable, he had in the land did not affect the contract in question in its character as an agreement to purchase. Being such an agreement, the plaintiff had the right to proceed under the unlawful detainer act above quoted."

However, in the case of Pope vs. Parker, 84 Colo. 535, a different rule was apparently announced by our Supreme Court. In that case the contract of sale provided that if the purchaser defaulted the seller should "have the right to enter upon the above described premises and sell the same at public sale" to pay the purchase price, accounting to the purchaser for any surplus. The seller brought a suit to quiet title, claiming a termination of the contract because of default, and in its opinion the Supreme Court said that it was clear enough that such contract was a mortgage which secured to the seller the performance of the obligations of the purchaser to him and that the fact that the seller retained the title to the property as security was the same in effect as if the purchaser had conveyed it to him for that purpose. The Court then said:

"Plaintiff's action, therefore, should have been to foreclose his mortgage instead of to quiet his title, but since the proper facts were set up to justify a decree of foreclosure the action should have been treated as such and a foreclosure sale ordered."

In this case the contract did not contain any forfeiture clause and did not provide that time should be of the essence and in addition the language in the contract in such case was most peculiar and expressly provided that in the event of default the vendor should have the right to enter upon the premises *and sell the same at public sale* to pay the purchase price and this naturally would lead to the inference that, since

the parties themselves had agreed that the rights of the purchaser should be terminated by a public sale, this necessarily involved a foreclosure and necessarily implied that the transaction constituted a mortgage which could be foreclosed only by an action brought for that purpose. For these reasons, the decision in Pope vs. Parker merely raised in the minds of attorneys the question of whether the language of the Court in that case was applicable to the ordinary case of an installment contract containing the usual provision for termination mentioned at the beginning of this discussion.

However, more specific statements along the same line were soon afterwards made by our Supreme Court in the case of Fairview Mining Corporation vs. American Mines and Smelting Company, 86 Colo. 77. The facts in that case were different from those of the ordinary sale of real estate on an installment contract and the circumstances in that case were rather unusual. However, the language of the Supreme Court in deciding the case appeared to establish a new general rule different from that which, as already stated, had previously been generally accepted as applicable to all installment sale contracts of real estate.

In the Fairview case an option was given for the sale of mining property which option the Court held became later a contract for sale and purchase binding on both parties; the purchaser made default in the making of payments and refused to vacate the property and the vendor brought an action to recover possession. It is true that on page 83 the Court said that there was no specific provision in the contract as to forfeiture for non-payment and time was not thereby made the essence of the contract, but the language which later in the opinion the Court used appeared to be applicable to any case of a contract for the sale of real estate on time payments. Such language was the following:

"The grantors in this contract retained title to the property doubtless as security for the payment of the agreed purchase price. If so, the relation between them and the grantee is the same as if title had passed from the grantor to the grantee and the latter had conveyed the title back to the grantor as security for such payment. Pope v. Parker, 84 Colo. 535, 271 Pac. 1118. Moreover, the language of the contract wherein the provision is that royalties paid under the provisions of paragraph 11, should be considered as rent and belong to the plaintiffs or lessors and not as a penalty or forfeiture, but as

liquidated damages, and other provisions of similar import indicate that the grantors and lessors were not intending to insist upon the penalty of a forfeiture. * * *

"Such being the law applicable to this case, and since with us separation of causes into law and equity no longer exists, plaintiff was wrong, under the admitted facts in the second defense of the answer, in resorting to an action for the recovery of possession. Plaintiff should have employed the equitable remedy of foreclosure and sale to the case as made by the admitted allegations of the answer, which is the same as, or similar to, that of grantor and grantee where the grantor retains the legal title of the property, which is the subject matter of sale, in the nature of security for payment of the purchase price or the balance of the purchase price due. *In substance, the transaction stated in this defense is that of an owner of land who is selling it on time or credit, and instead of conveying the legal title of the property to the grantee, retains the same as security for payment of the purchase price.* It is similar also to a transaction between a creditor and debtor where the debtor has by warranty deed conveyed land to his creditor to secure the payment of the debt, which transaction courts generally treat as, in substance, a mortgage, in which case, and in the case now before us, the proper and only remedy or procedure is by foreclosure and sale, since section 281 of our Code of Civil Procedure expressly declares that a mortgage of real property shall not be deemed a conveyance whatever its terms, so as to enable the owner of a mortgage to recover possession of the real property without foreclosure and sale. This was explicitly ruled in our recent case of Pope vs. Parker, supra. The transaction there was like the one now under review. The parties entered into a contract for the sale of land, the grantor retaining title to the land. The consideration was to be paid in installments and if the purchaser defaulted the grantor or vendor was given the right to enter the premises and sell them at public sale to pay the purchase price. We held that this was a mortgage in legal effect and that the provisions in the contract reserving the right in the vendor to enter the premises and sell them at public sale, was void and that the vendor's or grantor's remedy on purchaser's default, and the only remedy, was by action to foreclose and sell."

And the Court then directed that the judgment for the plaintiff be reversed with directions to the District Court to set aside and vacate such judgment and give plaintiff a reasonable time within which to file a new complaint, in the nature of a suit for foreclosure and sale of the mining property for the balance due on the purchase price.

In neither the Pope vs. Parker case nor the Fairview case did the Supreme Court refer in any way to the section of the unlawful detainer statute, which has been quoted herein, or to the decision in Schiffner vs. Chicago Title and Trust Company in 79 Colo. from which has been quoted herein the ruling that the contract of sale was not an equitable mortgage.

After the decision in the Fairview case had been rendered most, if not all, of the lawyers, who carefully studied such opinion, felt that any installment contract for the sale of real estate would have to be considered by them as being in effect the conveyance of the title to the purchaser and the giving back by the purchaser of a mortgage for the balance of the purchase price and the interests and rights of the purchaser thereunder could not be involuntarily terminated or cut out without a foreclosure action, decree, sale thereunder and expiration of the statutory period of redemption. This opinion of the attorneys was based not so much upon the facts in the Fairview case as upon the language herein quoted, which the Supreme Court used in arriving at its decision therein.

However, recently a new decision was rendered by our Supreme Court which makes a radical change in this situation. Such decision is American Mortgage Company vs. Logan, 90 Colo. 157.

In the Logan case the Logans brought suit to quiet title as against a contract which they had given to the Mortgage Company for the sale of land owned by them at the price of $28,000.00 of which $8,000.00 had been paid in stock of the Mortgage Company at the time of execution of the contract, the contract providing for $18,000.00 in cash to be paid four and a half months later, the balance of $2,000.00 to be evidenced by a note of the Mortgage Company to be given on delivery of deed; as expressly stated in the opinion, time was made of the essence of the contract and it was provided that in case of failure of the Mortgage Company to pay any installment within the prescribed time, the contract might be forfeited and determined at the election of the Logans upon giving a thirty-day notice of such election and that in that event all payments already made should be retained by the Logans as liquidated damages; such contract did not give the right of possession to the Mortgage Company prior to delivery of the deed and the Logans continued in possession; time of payment of the $18,000.00 was twice extended but no part of same was paid by the Mortgage Company and the only cash payment made by the Mortgage Company was $540.00 on account of interest; after the expiration of the last extension the Logans gave a thirty-day notice of their election to

declare the contract forfeited and terminated because of failure to make the required payment and, after expiration of the thirty days, they commenced suit. The Court held that the transaction did not constitute a mortgage and that foreclosure suit was not necessary to terminate the rights of the Mortgage Company, but that a quiet title suit would lie; the Court also held that under the facts and equities of the case the Mortgage Company was not entitled to any relief from a forfeiture. The Court said in part:

"The contention of the Mortgage Company is that the transaction created between the Mortgage Company and the Logans the relation of mortgagor and mortgagees, and therefore, that in order to foreclose the company's rights there must be a judicial foreclosure as in case of mortgages, with the accompanying statutory right of redemption. With that contention we do not agree.

"The contract is one customarily used where real property is sold on installments, with the exception that ordinarily there is a provision for immediate possession of the property by the vendee. Section 6369, Compiled Laws, provides that where a vendee, who has entered into possession under an agreement to purchase, fails to comply with the agreement and withholds possession from the vendor, after demand therefor, he is guilty of unlawful detainer. In such case the vendor may recover possession in an action brought under the unlawful detainer act. Section 281, Code of Civil Procedure, provides: 'A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without foreclosure and sale.' These two provisions clearly indicate that, in the view of the legislature, such a contract as the one involved in this suit is not a mortgage and is not to be treated as such; for if it were, either actually or in effect, a mortgage, the vendor could not recover possession under the unlawful detainer act until after foreclosure and sale, and then only in the event that he purchased at the sale.

"That unlawful detainer will lie where a vendee, in possession under a contract to purchase, withholds possession from the vendor after default and demand, see Schiffner v. Chicago Title & Trust Co., 79 Colo. 249, 244 Pac. 1012. Such was the procedure in Ruth v. Smith, 29 Colo. 154, 68 Pac. 278. Or, in such case, the vendor may sue in ejectment under sections 285 and 287 of the Code of Civil Procedure. Roller v. Smith, 76 Colo. 371, 231 Pac. 656. If the vendor is in possession, he may sue to quiet title under section 275 of the Code. Scroggs v. Harkness Heights Land Co., 76 Colo. 597, 233 Pac. 831. In the Schiffner case we said: 'It is next argued that the contract must be treated as an equitable mortgage, but there can be no mortgage of any kind unless the mortgagor has some real estate to pledge. This the defendant did not have. Whatever rights, either legal or equitable, he had in the land did not affect the contract in question in its character as an agreement to purchase. Being such an agreement, the plaintiff had the right to proceed under the unlawful detainer act.' And in the Roller case the law is stated thus: 'The

elimination of the equitable relief was right. The contract provided that upon failure to pay instalments the vendee's rights and his possession should be forfeited. It was on the ground of failure to pay instalments that the suit was brought. This was to enforce, not to cancel the contract. There was no function for equity to perform. The complaint should have been ejectment, drawn under Code of 1921, sec. 287.' Although the case of Gordon Tiger Mining Co. v. Brown, 56 Colo. 301, 138 Pac. 51, concerned an option, and the decision, therefore, does not control the present case, the opinion contains the following language that is applicable here: 'When by a contract for the sale of real property the vesting of title is made to depend upon conditions precedent, with the provision that a failure to comply with such conditions shall operate as a forfeiture of the rights of the vendee, then his failure to perform such conditions operates as a forfeiture of his rights. 1 Pomeroy's Equity Jurisprudence, section 455. In determining the question under consideration the distinction between conditions precedent and subsequent in contracts for the sale of real estate must be borne in mind.' In the contract now before us, as we have seen, the payment of the purchase price is expressly made a condition precedent to the vesting of title. * * *

"But the Mortgage Company contends that all this has been changed by our decisions in Pope v. Parker, 84 Colo. 535, 271 Pac. 1118, and Fairview Mining Corporation v. American Mines & Smelting Co., 86 Colo. 77, 278 Pac. 800. That is a mistake. We had no intention of overruling, nor did we overrule, the cases previously decided by us and cited above, nor did we intend to modify the law as announced therein. The contracts in the Pope and the Fairview cases were radically different from the one now before the court, and we held that, in effect, they were mortgages."

The Court then distinguishes the contracts in the Pope and Fairview cases from the one in the case then before it in the following language:

"In the Pope case, *supra,* the contract provided for possession by the vendee and that in case of default in the payment of any installment the vendor should have the right to enter and sell the property at public sale to pay the unpaid installment of the purchase price, accounting to the vendee for any surplus. Time was not made of the essence of the contract, and there was no forfeiture clause. That such contract was, in effect, a mortgage is clear. We held that under our Code of Civil Procedure, the provision for entry and sale was void; that foreclosure could be had only in the manner provided in chapter 21 of that Code. The contract now before us is entirely different. That case, therefore, has no application to the present one. Mr. Justice Denison, who wrote the opinion also wrote the opinions in Roller v. Smith, *supra,* and Scroggs v. Harkness Heights Land Co., *supra.* The contracts in those cases and in Schiffner v. Chicago Title & Trust Co., *supra,* and Ruth v. Smith, *supra,* were so obviously different from the contract in the Pope case that it was considered unnecessary to refer to the former cases, even for the purpose of distinguishing them.

"The contract in the Fairview case, also, differed in important particulars from that under consideration here and from the contracts before the court in the Roller, Scroggs, Schiffner and Ruth cases, *supra*. As stated in the opinion, time was not made of the essence of the contract; there was no specific provision for forfeiture, the contract, on the contrary, indicating by its terms that the parties 'were not intending to insist upon the penalty of a forfeiture'; and the title was retained as security for the payment of the purchase price. It was also stated in the opinion that the transaction in Pope v. Parker, *supra*, 'was like the one * * * under review' in the Fairview case. The contract, therefore, was, in effect, a mortgage. It is to be noted, also, that there were strong equities in favor of the vendee in that case. It appears that the vendee paid more than one-half of the purchase price; that it greatly enhanced the value of the property by making numerous and expensive improvements; that it intended to make the final payment within the time permitted by the extension agreement and expected to be able to do so; and that upon the arrival of the due date without payment having been made, the vendor immediately attempted to terminate the contract and retain all the benefits received. Mr. Justice Campbell, who wrote the opinion, also wrote the opinion in Ruth v. Smith, *supra*, and concurred in the opinion in Schiffner v. Chicago Title & Trust Co., *supra*. As the contracts in those cases were different from the contract in the Fairview case, and as there was no intention to change the law as stated in the Ruth and the Schiffner cases, it was not deemed necessary to refer to them in the opinion in the Fairview case."

Having distinguished the contracts in the Pope and Fairview cases from the one in the case before it, the Court then disposes of the effect of the general language (which, as has already been stated, appeared to lay down a general rule), contained in the decision in the Fairview case, by the following:

"Counsel for the Mortgage Company rely upon certain language in the opinion in the Fairview case; but in that case, as in all others, the language used in the opinion must be considered in connection with the facts."

And the Court then cites a number of Colorado and United States Supreme Court decisions to the effect that general language in a decision must be confined to the facts of that particular case.

The Court concludes its discussion of the question of whether the transaction in question constituted a mortgage by the following:

"We hold that the contract now before us was not a mortgage, or in the nature of a mortgage, or in effect a mortgage."

Having disposed of the question of whether the contract in question was in effect a mortgage which would have to be

foreclosed to cut out the rights of the purchaser, the Court then considers whether, under the facts of the case and the equities of the respective parties, the purchaser was entitled to relief against a forfeiture and, after laying down the general rule that equity abhors a forfeiture and in a proper case will relieve against one but that a vendee is not entitled to relief against a forfeiture where he makes no attempt to fulfill his part of the contract and his default was not caused by fraud, ignorance not willful, surprise, accident, or mistake and, after discussing the facts of the case and the equities of the parties, holds that the Mortgage Company was not entitled to any relief from a forfeiture and there affirmed the judgment of the trial court quieting the title of the Logans and removing the cloud of the contract of sale.

In the discussion by the Court of the question of whether the Mortgage Company was entitled to relief from a forfeiture the following language is extremely pertinent to the question of whether, even if the purchaser were entitled to relief from a forfeiture, the contract would by reason thereof be considered to be a mortgage requiring foreclosure:

> "Even if there were equities entitling the Mortgage Company to such relief, the court would not decree a foreclosure, as in case of mortgages. The utmost that the Mortgage Company, in such case, could claim would be a reasonable time after default in which to perform its agreement and thereby prevent a forfeiture. But in the present case it had all the delay that equity would require."

It is to be noted that in discussing the question of relief from a forfeiture the Court very carefully phrases its language so as to make it clear that the question of whether the vendee is entitled to relief from a forfeiture is one entirely independent of the question of whether the contract constitutes a mortgage which must be foreclosed by suit.

From a careful study of the opinion in the Logan case it would seem that the following are the results of such decision: an installment contract of sale of real estate does not necessarily create the relation of mortgagor and mortgagee; the general language in the Pope and Fairview cases, which appeared to lay down a rule that such relation was necessarily created by such a contract, is to be confined to cases where the contracts are similar to those in the Pope and Fairview cases; since the

contract in the Pope case contained a most unusual provision expressly requiring, in event of default, a public sale of the property and the accounting to the purchaser for any surplus, a case involving a contract containing such a provision would be extremely rare; furthermore, as was emphasized by the Court in its decision in the Logan case, "time was not made of the essence of the contract and there was no forfeiture clause" in the contract in the Pope case, and, similarly, "time was not made of the essence of the contract; there was no specific provision for forfeiture" in the contract in the Fairview case; therefore, if in any case under consideration the contract expressly provides that time shall be of the essence of the contract and such contract contains a specific provision for forfeiture upon a specified notice (the period of such notice being a reasonable one), such a contract would not be similar to the contract in either the Pope case or the Fairview case and therefore it would not be governed by either the Pope case or the Fairview case but would be controlled by the Logan case with a result that such a contract would not be in effect a mortgage and no action to foreclose would be required to terminate the rights of the purchaser thereunder; if, because of improvements made by the purchaser or the proportion of the purchase price already paid, or other equities of the parties, the purchaser would be entitled to relief, such relief would not be through the Court decreeing a foreclosure and a sale thereunder but would be through the allowing by the Court to the purchaser of further time "in which to perform its agreement and thereby prevent a forfeiture"; these equities entitling the purchaser to such relief against a forfeiture would have no connection with the question of whether the transaction constituted a mortgage because, if at the time the contract was made the contract did not constitute a mortgage, the acts of the parties subsequent thereto with reference to the amount paid on the purchase price, the improvements made by the purchaser and other matters discussed in the Pope and Fairview decisions would not transform it into a mortgage and, conversely, if it did constitute a mortgage at the time it was executed, the subsequent acts of the parties in the way of making payments, improving the property and other acts referred to in the Pope and Fairview cases would

not make the contract any the less a mortgage; whether the transaction constitutes a mortgage depends upon the terms of the contract and the facts as they existed at the time of its execution and not upon equities arising from acts subsequent thereto; and as a logical conclusion from the foregoing, if, in any case involving an installment contract for sale of real estate containing the provisions mentioned in the first paragraph hereof, the seller brings a suit against the purchaser, whether such suit be in ejectment or unlawful detainer or an action to quiet title or to remove a cloud, and, if jurisdiction is acquired by proper service of process, a judgment or decree rendered against the purchaser, whether the same be upon default or after a hearing on the merits, will be conclusive that the rights of the purchaser under such contract have been terminated and that he no longer has any interest in the property under such contract.

If, however, a case involving the question discussed herein should be in the Federal Court in Colorado the foregoing rules would not be applicable because of the decision in the case In re Ben Boldt, Jr. Floral Co., 37 Fed. (2d) 499. This was a decision of the Circuit Court of Appeals of the Tenth Circuit upon appeal from the District Court for the District of Colorado and the contract involved therein was in the ordinary form of installment contract in use in Colorado providing time should be of the essence and providing for termination of the contract upon thirty days notice in case of default. The Circuit Court of Appeals, without referring to any Colorado decisions or statute upon this question but basing its conclusions entirely upon decisions of states other than Colorado, held that under such contract the sellers held the legal title to the property as trustees for the purchaser to secure the unpaid purchase price and that (the contract having been recorded) such lien was a prior *bona fide* recorded encumbrance under the mechanic's lien law, the Court saying:

"A binding contract for the sale and purchase of land, under which payments on the purchase price are to be made in the future, vests an equitable title to the land in the purchaser from the date of the execution of the contract. * * * Under such a contract, the vendor is trustee of the legal title for the purchaser and the vendee is trustee of the purchase money for the vendor. * * * The vendor retains the legal title, but only as security for the purchase price."